

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

BETHANY R. SCAER and STEPHEN SCAER,

Plaintiffs,

v.

CITY OF NASHUA, a Municipal Corporation,
JAMES W. DONCHESS, Mayor, City of Nashua, in
his official and individual capacities, and
JENNIFER L. DESHAIES, Risk Manager, City of
Nashua, in her official and individual capacities,

Defendants.

Civil Action No. 1:24-cv-00277-LM-TSM

THE DEFENDANTS' OPPOSITION TO THE PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION

NOW COME the Defendants, City of Nashua (“the City”), James W. Donchess, Mayor of the City of Nashua (“Mayor Donchess”), and Jennifer L. Deshaies, Risk Manager for the City of Nashua (“Deshaies”) (collectively the “Defendants”), by and through counsel, who hereby submit this joint Opposition to the Plaintiffs’ Motion for Preliminary Injunction. As described in greater detail in the Defendants’ accompanying Memorandum of Law, as grounds for this Opposition, the Defendants state that the City’s 2022 Flagpole Policy complies with Supreme Court precedent and clearly provides the use of the flagpole is deemed to be government speech. As government speech is exempt from First Amendment scrutiny, the Plaintiffs, Bethany R. Scaer and Stephen Scaer (the “Plaintiffs” or the “Scaers”) (1) have failed to demonstrate a likelihood of success on the merits; (2) have failed to demonstrate that they would incur irreparable harm; (3) have failed to demonstrate that the balance of hardships tips in the plaintiffs’ favor; and (4) have failed to demonstrate that the requested relief will not harm the public interest. Winter v. Nat. Res. Def.

Council, Inc., 555 U.S. 7, 20 (2008). Furthermore, the injunctive relief sought by the Plaintiffs is now moot due to the City implementing a new flagpole policy on October 7, 2024. See Ford v. Bender, 768 F.3d 15, 29 (1st Cir. 2014).

WHEREFORE, the Defendants respectfully request that this Honorable Court:

- A) DENY the Plaintiffs' Motion for Preliminary Injunction and
- B) GRANT any further relief that is deemed just and proper.

Respectfully submitted,

City of Nashua, Defendant
By its attorneys,

/s/ Jonathan A. Barnes
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Jennifer L. Deshaies, Defendant
By her attorneys,

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James W. Donchess, Defendant
By his attorneys,

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Dated: October 10, 2024

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has this day been forwarded through the Court's electronic filing system to Bethany R. Scaer and Stephen Scaer and to all counsel of record.

/s/ Jonathan A. Barnes
Jonathan A. Barnes